IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 799 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

EMPLOYEES STATE INSURANCE CORPORATION

Versus

PANNALAL SITARAM

Appearance:

MR SR SHAH for the appellant

No one has appeared on behalf of the respondent.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/06/2000

ORAL JUDGEMENT

This appeal is directed against the judgment and order dated 7th March 1980 passed by the Judge, Employees Insurance Court, Ahmedabad in an Application (ESI) No.90 of 1978, i.e. application purporting to be under Section 77 of the Employees State Insurance Act, 1948. Aggrieved from this order dated 7th March 1980, the Employees State

Insurance Corporation has preferred this appeal.

2. One Shri Pannalal Sitaram was an employee of Bhalakia Mills, Ahmedabad and was working in the Weaving Department as an Operator in the second shift. Said Shri Pannalal Sitaram in employment as aforesaid claiming to be an insured person under the State Insurance Act, 1948 preferred an application under Section 77 of the Act praying for declaration that he had met with an accident and suffered injury on 26th March 1978 and claimed temporary as well as permanent disablement benefit and directions to the opponents to refer him to the Medical Board for determination of the question of his permanent disablement. The Employees Insurance Court framed the following Issues for deciding the application as aforesaid:

(1) Whether the applicant proves that personal injury was caused to his right leg on 26-3-1978 by accident as alleged?

(2) Whether the said accident to the applicant arose out of and in course of his employment?

(3) Whether the applicant had informed about this accident to his employer as alleged?

(4) What is the consequence of the employer refusing to report about the accident to the opponent?

(5) What benefits the applicant is entitled to from the opponent,if any?

(6) What order?

3. Having heard Mr.Shah, this Court finds that the first and the foremost question and the basic issue which requires consideration by this Court is Issue No.2, i.e. whether the said accident to the applicant arose out of and in course of his employment? The Employees Insurance Court had decided this Issue No.2 in favour of the employee holding that the injuries sustained by the applicant to his right leg amounted to employment injury and that he will be entitled to disablement benefits under the Act, i.e. temporary disablement benefits for the period he remained temporarily disabled because of some injury to his right leg and that such benefit is subject to the production of required medical certificates under the Regulations. It was further held that he will also be entitled to permanent disablement benefits if the claim made by him for the disablement

because of that employment injury is determined by the Medical Board as such and that the applicant should have been referred to the Medical Board by the opponent for determination of that question and such course of action had not been adopted by the opponent, the question of permanent disablement has to be determined under Section 54 of the Act by the Medical Board, and therefore, the applicant will have to be referred to the Medical Board by the opponent and accordingly, the order was passed. The aforesaid view was taken by the Employees Insurance Court, placing reliance on the decisions of this Court in case of Dudhiben Dharamshi and ors. v. New Jehangir Vakil Mills, Bhavnagar reported in 1977 L.L.J. 194 in which the theory of notional extension of employment had been discussed in detail.

4. Mr.Shah, learned counsel for the appellant, has placed reliance on a decision of the Supreme Court in the case of Regional Director, E.S.I. Corporation and anr. v. Francis De Costa and anr., reported in AIR 1977 SC 432 and has submitted that if an employee on his way to the factory, i.e. place of employment meets with an accident away from the said place, the injury sustained by the said employee cannot be said to be "employment injury" and it cannot be said that the injury was caused by an accident arising out of and in the course of his employment. In the present case, it is very clear from the impugned order itself that the facts are not in dispute that the applicant employee was an insured person as an Operator in the Weaving Department; during the relevant period, he was working in the second shift in the Mill which commences at 3.30 p.m. and ends at 12.00 in mid-night; the applicant himself has deposed that on that day of 26th March 1978, he had proceeded from his house on Cycle at about 3.00 p.m. to go to the Mill to join his duties at 3.30 p.m. and he further said that he had reached near the Mill's Gate when the rickshaw from behind knocked him and as a result of which, he fell down from the Cycle and sustained the injury on his right leg.

5. In view of the aforesaid fact-situation, it is very clear that he has met with the accident and sustained the injury outside the place of his employment. In view of the law laid down by the Apex Court in the case of Regional Director, E.S.I. Corporation (supra), it cannot be said that in the present case, the Employees Insurance Court had rightly held that it was a case of employment injury. In fact, the view taken by the Employees Insurance Court cannot be said to be a correct view in the face of the law laid down by the Apex Court in the decision referred to above. Once it is held that

it was not a case of employment injury, all legal consequences have to follow and in view of the fact that this Court finds that it was not a case of employment injury, it is not necessary for this Court to go into the other Issues which were decided by the Employees Insurance Court and the order passed by the Employees Insurance Court cannot be sustained in the eye of law. The same is hereby set aside. This First Appeal filed by the Employees State Insurance Corporation succeeds. The same is allowed. In the facts and circumstances of this case, no order as to costs.

(M.R. Calla, J.)

Sreeram.